

Yes  
1/9/52

January 8, 1952

Opinion No. 52-4

The Arizona Childrens' Colony  
Coolidge, Arizona

Attention: Mr. J. Thomas McIntire

Dear Mr. McIntire:

We have your letter of December 31, 1951, wherein you ask the following questions:

Question Number 1:

"Would you please review the Admission law and give us a step by step interpretation of the procedure especially with regard to the action to be taken by the court."

Your question is in regard to Petitions for Admission made by you to the Superior Court. Section 8-904 ACA 1939, provides who shall apply to the board for admission of a child to the colony and what the petition shall contain.

"Petition for admission. --(a) A parent or guardian of a mentally defective child may file with the board a verified petition requesting that such child be admitted to the colony. The petition shall include: 1. the relation of the child to the petitioner; 2. the name, age, sex and residence of the child; 3. a statement of the mental and physical condition of the child; 4. whether the child has any property or means of support; 5. the name of the person having custody of the child, and 6. the place where and length of time the child has resided in the state.

(b) In the event the child is an indigent, application shall be made to the board by the board of supervisors of the county in which it resides."

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It is our opinion that on receiving an application for admission, the Board must file the petition with the Superior Court of the county in which the child resides. (Section 8-905, ACA 1939)

Upon filing of the petition with the court, the court shall (1) set a time and place for hearing on the petition; (2) appoint two reputable physicians to examine and report to the court the mental status of the child and whether he is afflicted with or a carrier of a contagious or infectious disease, and (3) appoint the sheriff of the county or a deputy thereof to determine the residence and amount of estate of the child.

In the event the court finds the child resides in that county, is not afflicted with or a carrier of a contagious or infectious disease, and the facts as set forth in the petition are true, it may order admission of the child to the Colony.

The Order of Admission shall include the name, residence, and date of birth of the child, the nationality and address, insofar as may be ascertained, of his parents, the amount of his estate and the weekly amount the person liable for his support can pay for the maintenance of such child in the Colony. (Section 8-906, ACA 1939)

Question Number 2:

"There have been several cases where the parents can partially support the child and the question has been raised (1) as to whether the counties are responsible for the balance of the maintenance costs. (2) One judge questioned how the supervisors were to be notified, whether this was his or our responsibility."

Section 8-906 ACA provides that the court in its Order of Admission shall set forth among other things, the weekly amount the person liable for the child's

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support can pay for the maintenance of such child in the Colony. Apparently this amount need not be the full cost of maintaining the child in the Colony. The balance, if any, plus the collection of the amount named by the court must be collected by the Board as set forth in Section 8-911.

Section 8-903 ACA 1939 sets forth the requirements necessary for a child to be eligible for admission to the Colony. Subsection 3 of this section makes one of the requirements, if the child is an indigent, that the county in which the child resides shall be responsible for the costs of maintenance in the Colony. This seems to give the county the discretionary power of assuming the costs of an indigent child or not doing so, for whatever good reason the county might have. From this it would seem logical that the county has the discretion to refuse to pay the costs of a totally dependent child as well as those of a child only partially dependent because of help from his parents or guardians. If the county refuses to pay for the balance it would seem that the requirements for admission have not been met and the child cannot be admitted. If application has been made to the Board by the county in the first instance the county has assumed the responsibility for payment of all the cost of the child and therefore would be responsible for any balance there might be, if the Court finds that the parents or guardians can pay for part of the costs.

Section 8-911 ACA 1939 provides that where the Board finds that the parent or guardian can pay for the child's maintenance, training and education in the Colony, the Board shall require payment quarterly, in advance from said parent or guardian. This section further provides that the cost of maintenance of a dependent or indigent child shall be a charge against the county in which the child resides at the time of admission. This would seem to place the burden of notifying the Supervisors on the Board, plus the fact that such a function is not generally assigned a court.

Very truly yours,

FRED O. WILSON  
Attorney General

ALFRED C. MARQUEZ  
Assistant Attorney General

ACM:d

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